

May 23, 2022

Via ECF

Hon. Ronnie Abrams
United States District Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2203
New York, NY 10007

Re: *Best Brands Consumer Products Inc. v. PHSA, LLC*
Case No. 22-cv-803

Dear Judge Abrams:

We represent Best Brands Consumer Products Inc. (“Best Brands”) in the above matter. We respectfully request that the Court postpone *sine die* the pre-trial conference in the above matter scheduled for May 26th, due to the default of Defendant Public Health and Safety Advocates, LLC (“Defendant” or “PHSA”).

Before Defendant’s due date to respond to the Complaint, Best Brands filed an Amended Complaint on April 28th. Under Rule 5(a)(2), that ECF filing of the Amended Complaint constituted service, since Defendant is represented by counsel. Defendant’s response to the First Amended Complaint was due on May 12th. To date, Defendant has not responded.

On May 13th, we informed Defendant that it missed its due date, and asked when we could expect its response. Counsel replied by alleging that Best Brands is obligated to serve the Amended Complaint under Rule 4 (like an original complaint), and indicated that Defendant would not be responding. On May 16th, we emailed Defendant’s counsel to explain that the rule and caselaw both dictate that service is complete. *See* Rule 5(a)(2); *see also, Painters’ Trust v. Ethan Enters.*, 480 F.3d 993, 999 (9th Cir. 2007); *Gorton v. Air & Liquid Sys. Corp.*, 2022 U.S. Dist. LEXIS 3896 *56-57 fn. 3 (M.D. Pa. January 7, 2022). Since we preferred to avoid the need to move for a default, we again requested that Defendant’s counsel inform us whether and when Defendant would be responding to the Amended Complaint. Defendant has never responded. As such, Best Brands is left with no choice but to move for a default judgment under the Court’s Individual Rule 4.F., and intends to do so in the near future.

Accordingly, we respectfully request that the pre-trial conference currently scheduled for May 26, 2022 at 12 pm (*see* Dkt. 11) be taken off the calendar, in view of Best Brands’ upcoming filing of its motion for a default judgment.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Lee A. Goldberg

Lee A. Goldberg

cc: Counsel of PHSA (via ECF and via email)